

Message Text

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ORIGIN TRSE-00

INFO OCT-01 EA-07 ISO-00 FEA-01 AGRE-00 CEA-01 CIAE-00
COME-00 DODE-00 EB-07 FRB-03 H-01 INR-07 INT-05
L-03 LAB-04 NSAE-00 NSC-05 PA-01 EPG-02 AID-05
SS-15 STR-04 ITC-01 PRS-01 SP-02 OMB-01 JUSE-00
USIE-00 INRE-00 NSCE-00 SSO-00 /077 R

DRAFTED BY TREAS:LPOTTS:JH
APPROVED BY EB/OT/STA:TO'HERRON
TREAS:DHILLENACK
CUSTOMS:DBINDER
TREAS:POSUCHMAN
EB/ITP:WBARRACLOUGH
EB/OT/STA:MCJONES
EA/J:SECTON

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FM SECSTATE WASHDC
TO AMEMBASSY TOKYO IMMEDIATE

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E.O. 11652: N/A

TAGS: ETRD, JA

SUBJECT: ANTIDUMPING INVESTIGATION OF CARBON STEEL PLATE
FROM JAPAN

1. TREASURY DEPUTY SECRETARY CARSWELL MET WITH JAPANESE
AMBASSADOR TOGO ON JUNE 30 TO DISCUSS JAPANESE MANUFAC-
TURERS' CONTINUED REFUSAL TO PROVIDE TO U.S. TREASURY
COST OF PRODUCTION INFORMATION IN CONNECTION WITH ITS
ANTIDUMPING INVESTIGATION. DEPUTY SECRETARY CARSWELL
OUTLINED ADVERSE CONSEQUENCES WHICH WOULD PROBABLY RESULT
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FROM FAILURE TO RESPOND TO OUR REQUEST. AMBASSADOR TOGO
INDICATED CONCERN OF JAPANESE MANUFACTURERS OVER THE
REQUEST. FYI. THOUGH THE JAPANESE DELEGATION DID NOT
SPECIFICALLY SO STATE, IT IS OUR VIEW THAT THE JAPANESE
FIRMS PROBABLY WILL NOT PROVIDE THIS DATA. END FYI.

2. DEPUTY SECRETARY CARSWELL EXPINED IN DETAIL THE

PROCEDURES FOLLOWED IN ANTIDUMPING CASES, INCLUDING THE RIGHT OF ALL PARTIES TO HAVE A HEARING AT THE TREASURY BEFORE A FINAL DETERMINATION WAS MADE. THE JAPANESE WERE CONCERNED THAT JAPANESE MANUFACTURERS BE ABLE TO HAVE AN OPPORTUNITY TO PRESENT THEIR VIEWS ON THE COST OF PRODUCTION FIGURES CONSTRUCTED BY THE TREASURY, ASSUMING ACTUAL COP DATA WAS NOT SUBMITTED, THE TREASURY HEARING WOULD PROVIDE A PROCEDURE WHEREBY JAPANESE FIRMS MIGHT MAKE THEIR VIEWS KNOWN PRIOR TO THE FINAL DECISION BY THE TREASURY (FINAL DETERMINATION DUE 12/30/77).

3. JAPANESE DELEGATION WAS CONCERNED THAT IF THEIR MANUFACTURERS' COST OF PRODUCTION DATA WAS DISCLOSED TO THE TREASURY WE MIGHT NOT BE ABLE TO GUARANTEE THAT THIS INFORMATION WOULD NOT BE RELEASED OUTSIDE THE TREASURY. GENERAL COUNSEL-DESIGNATE MUNDHEIM EXPLAINED THAT TREASURY WOULD ACCORD CONFIDENTIAL TREATMENT TO THIS INFORMATION. HOWEVER, SUCH INFORMATION MIGHT BE TRANSMITTED TO A U.S. GOVERNMENT BODY IN THREE SITUATIONS, I.E. IN THE COURSE OF LITIGATION OR UPON REQUEST OF CONGRESSIONAL COMMITTEES OR OTHER GOVERNMENT AGENCIES HAVING RESPONSIBILITIES

IN THE
AREA.

THE TREASURY WOULD OF COURSE EMPHASIZE THE CONFIDENTIAL LIMITED OFFICIAL USE

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NATURE OF THE INFORMATION IF SUCH INFORMATION WERE SO TRANSMITTED AND WOULD RESIST STRENUOUSLY ANY PUBLIC DISCLOSURE OF THIS INFORMATION.

4. HERE FOLLOWS THE TEXT OF A LETTER FROM DEPUTY SECRETARY CARSWELL TO JAPANESE AMBASSADOR TOGO PERSONALLY GIVEN THE AMBASSADOR AT THE JUNE 30 MEETING, TEXT OF WHICH ACCURATELY REPRODUCES THE CONTENTS OF THEIR JUNE 30 CONVERSATION IN DETAIL. BEGIN TEXT:

DEAR MR. AMBASSADOR,

THIS LETTER IS INTENDED TO CONFIRM THE MATTERS DISCUSSED AT OUR MEETING TODAY CONCERNING THE TREASURY DEPARTMENT'S ANTIDUMPING INVESTIGATION OF CARBON PLATE STEEL FROM JAPAN.

WE EXPLAINED TO YOU THE ADVERSE CONSEQUENCES WHICH LIKELY WOULD RESULT IF JAPANESE STEEL MANUFACTURERS DO NOT SUBMIT THE DATA WE HAVE REQUESTED PERTAINING TO THE COST OF PRODUCTION OF CARBON PLATE STEEL DURING THE PERIOD JFY 1976. OUR REQUEST FOR THIS DATA INDICATED A DEADLINE FOR SUBMISSION OF MAY 26, 1977, IN ORDER TO

PERMIT US TO MEET THE STATUTORY DEADLINE WHICH PERTAINS TO ANTIDUMPING INVESTIGATIONS. THE JAPANESE FIRMS CONCERNED HAVE UP UNTIL NOW FAILED TO SUBMIT THIS DATA. IF WE-DO NOT HAVE INFORMATION ON COST OF PRODUCTION FROM THE JAPANESE FIRMS INVOLVED SECTION 153.31(A) OF OUR ANTIDUMPING REGULATIONS REQUIRES US TO USE ALTERNATIVE SOURCES TO DETERMINE WHETHER OR NOT JAPANESE HOME MARKET SALES OF THIS PRODUCT HAVE BEEN MADE AT PRICES BELOW THE COST OF PRODUCTION. WE WOULD THEN CONSTRUCT A COST OF PRODUCTION BY SELECTING THE BEST INFORMATION AVAILABLE FROM INFORMATION SUBMITTED BY THE PETITIONER, OTHER DOMESTIC FIRMS OR INDUSTRY ASSOCIATIONS, AND INFORMATION AVAILABLE FROM INDEPENDENT CONSULTANTS AND U.S. GOVERNMENT AGENCIES.

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IF OUR ANALYSIS OF THE INFORMATION RECEIVED FROM THESE OTHER SOURCES DOES, IN FACT, INDICATE THAT SUBSTANTIALLY ALL HOME MARKET SALES ARE BELOW THE COST OF PRODUCTION, THE QUESTION OF WHETHER OR NOT IMPORTS OF THIS PRODUCT IN THE UNITED STATES ARE BEING SOLD AT BELOW FAIR VALUE WILL BE DETERMINED BY COMPARING PRICES IN THE UNITED STATES WITH A CONSTRUCTED VALUE. SECTION 206(A) OF THE ANTIDUMPING ACT DEFINES "CONSTRUCTED VALUE" AS THE SUM OF THE COST OF MATERIALS AND OF FABRICATION OR OTHER PROCESSING OF ANY KIND EMPLOYED IN PRODUCING SUCH OR SIMILAR MERCHANDISE AND AN AMOUNT FOR GENERAL EXPENSES AND PROFIT EQUAL TO THAT USUALLY REFLECTED IN SALES OF MERCHANDISE OF THESE SAME GENERAL CLASS OR KIND BY JAPANESE PRODUCERS IN THE ORDINARY COURSE OF TRADE.

SECTION 206(A) FURTHER REQUIRES THAT CONSTRUCTED VALUE INCLUDE AN AMOUNT FOR GENERAL EXPENSES OF AT LEAST TEN PERCENT OF THE COST OF MATERIALS AND FABRICATION. IT

ALSO INDICATES THAT THE AMOUNT TO BE INCLUDED FOR PROFIT CONSTITUTE AT LEAST EIGHT PERCENT OF THE SUM OF COST OF MATERIALS, FABRICATION, AND GENERAL EXPENSES.

THE STATUTE WOULD ORDINARILY REQUIRE US TO MAKE A TENTATIVE DETERMINATION IN THIS CASE BY SEPTEMBER 30, 1977, AND A FINAL DETERMINATION NO LATER THAN DECEMBER 30, 1977. THE MAY 26, 1977, DEADLINE FOR SUBMISSION OF DATA BY THE JAPANESE MANUFACTURERS WAS IMPOSED TO GIVE US TIME TO COMPLETE THE VERIFICATION, ANALYSIS AND REVIEW OF THEIR INFORMATION WHICH IS NECESSARY FOR US TO UTILIZE THEIR DATA IN MAKING OUR TENTATIVE DETERMINATION.

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THE TIME WITHIN WHICH WE CAN ACCOMPLISH THIS TASK IS RAPIDLY EDING AND SHORTLY WE HAVE NO CHOICE BUT TO UTILIZE THE PROCEDURE OUTLINED ABOVE. IF THE DATA REQUESTED IS SUBMITTED BUT CANNOT BE SUBJECTED TO THE NECESSARY SCRUTINY PRIOR TO OUR TENTATIVE DETERMINATION, THEN, IF TIMELY, WE WILL CONSIDER IT IN MAKING OUR FINAL DETERMINATION.

WE UNDERSTAND CONCERN OF THE MANUFACTURERS THAT THEIR COST OF PRODUCTION DATA BE KEPT CONFIDENTIAL. TREASURY DOES NOT MAKE SUCH INFORMATION AVAILABLE TO OTHER RTIES. TREASURY PROVIDES COST OF PRODUCTION INFORMATION TO THE OTHER PARTIES ONLY IN THE FORM OF NONCONFIDENTIAL SUMMARIES PREPARED BY THE PARTY SUBMITTING THE INFORMATION. THERE ARE THREE SITUATIONS IN WHICH IT IS POSSIBLE THAT

THE CONFIDENTIAL DATA MAY BE MADE AVAILABLE TO PERSONS OUTSIDE TREASURY. SHOULD THIS CASE EVENTUALLY RESULT IN LITIGATION, THE OPPOSING PARTIES MIGHT SEEK TO OBTAIN THIS DATA THROUGH JUDICIAL DISCOVERY PROCEDURES. OUR PAST EXPERIENCE SUGGESTS THAT IN SUCH CIRCUMSTANCES THE SENSITIVE PARTS OF THESE SUBMISSIONS WOULD BE RELEASED ONLY UNDER A PROTECTIVE ORDER BY THE COURT LIMITING DISCLOSURE TO COUNSEL FOR THE PARTIES. IN RARE CASES THIS INFORMATION ALSO MAY BE REQUESTED BY AND RELEASED TO APPROPRIATE COMMITTEES OF THE U.S. CONGRESS. IN ADDITION, THERE ARE OCCASIONS WHEN THE INFORMATION MAY BE GIVEN TO OTHER U.S. GOVERNMENT AGENCIES, IF THE TREASURY IS SATISFIED THAT THEIR REQUEST FOR THE INFORMATION IS IN FURTHERANCE OF THE FULFILLMENT OF THE STATUTORY RESPONSIBILITIES OF THE REQUESTING AGENCY. IN BOTH OF THESE INSTANCES, TREASURY WOULD INDICATE THAT THE INFORMATION IS CONFIDENTIAL AND ASK THAT IT NOT BE RELEASED WITHOUT ITS PERMISSION.

THE REQUIREMENT FOR THE SUBMISSION OF COST OF PRODUCTION
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DATA IS NOT CONFINED TO THIS PHASE OF THE INVESTIGATION. SHOULD TREASURY DETERMINE THAT THERE HAS BEEN SALES AT BELOW THE COST OF PRODUCTION, AND SHOULD THERE BE A DUMPING FINDING, THE ASSESSMENT PROCESS WOULD REQUIRE THE CONTINUED SUBMISSION OF COST OF PRODUCTION DATA ON A REGULAR BASIS FOR THE DURATION OF THE DUMPING FINDING. ONCE THIS THE DETERMINATION HAS BEEN MADE DURING THE

CONDUCT OF THE FULL SCALE ANTIDUMPING INVESTIGATION
THAT FOREIGN MANUFACTURERS ARE SELLING AT PRICES LESS
THAN THE COST OF PRODUCTION, TREASURY MUST DETERMINE IN
THE ASSESSMENT PHASE OF THE CASE WHETHER OR NOT THE
PATTERN OF BELOW COST PRICES IS CONTINUING. OF COURSE,
CONTINUED REFUSAL TO PROVIDE THE DATA WOULD REQUIRE
CONTINUED RELIANCE ON ALTERNATIVE SOURCES OF AND THE
POTENTIALLY ADVERSE CONSEQUENCES FLOWING THEREFROM.

WE APPRECIATE THE OPPORTUNITY TO EXPPAIN TO YOUR OUR
PROCEDURE ON ANTIDUMPING INVESTIGATIONS. IF YOU
SHOULD HAVE ANY FURTHER QUESTIONS, PLEASE LET ME KNOW.

SINCERELY

ROBERT CARSWELL
DEPUTY SECRETARY
ENT TEXT.
CHRISTOPHER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: STEEL, ANTIDUMPING LAW (TRADE)
Control Number: n/a
Copy: SINGLE
Sent Date: 01-Jul-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977STATE154144
Document Source: CORE
Document Unique ID: 00
Drafter: LPOTTS:JH
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770236-0171
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770796/aaaadvj.tel
Line Count: 243
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 63e6f071-c288-dd11-92da-001cc4696bcc
Office: ORIGIN TRSE
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 16-Feb-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1979579
Secure: OPEN
Status: NATIVE
Subject: ANTIDUMPING INVESTIGATION OF CARBON STEEL PLATE FROM JAPAN
TAGS: ETRD, JA
To: TOKYO
Type: TE
vdkgvkey: odb://SAS/SAS.dbo.SAS_Docs/63e6f071-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009